

MATTOX LAW FIRM

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MEMORANDUM

FROM: Mattox Law Firm on behalf of the Umstead Coalition
RE: Proposed Mineral Lease of Airport Property
DATE: February 28, 2019

I. Introduction

We received notice on February 27, at 7:57 AM that the Raleigh-Durham Airport Authority Board will be holding a special meeting on Friday, February 29 at 9:00 AM to “consider a Mineral Lease Agreement with Wake Stone Corporation.” Any action taken approving a lease agreement of airport property for mineral extraction and/or quarry purposes, prior to obtaining necessary releases and approvals from the FAA and the four municipality airport sponsors, is premature and in violation of federal regulations.

The Odd Fellows Tract and surrounding tracts were acquired by the RDU Airport Authority and the City of Raleigh, City of Durham, County of Wake, and County of Durham for aeronautical purposes. In order to repurpose this land to lease for a quarry, a release of federal obligations must be obtained from the Federal Aviation Administration (FAA) through a request made by the four municipalities and the RDU Airport Authority. The RDU Airport Authority MAY NOT sign or solicit a lease for a quarry without first obtaining the required FAA Release.

Further, all proposed mineral leases must be reviewed and pre-approved by the FAA in accordance with FAA Advisory Circular 150/5100-20 section 2.5.2 which specifically addresses leases of mineral rights.

Additionally, the RDU Airport Authority lacks the power to grant a long term ground lease for a quarry without the joinder of the four owning municipalities. Section 7(c) of House Bill 878 passed in 1959 granted the RDU Airport the authority to lease property for a period less than 40 years without the consent of the four owning municipalities. This enabling legislation states that such a lease must be “for purposes not inconsistent with the grants and agreements under which the airport is held.” *The proposed lease is inconsistent with such grants and agreements as the Odd Fellows Tract was acquired for airport purposes and a quarry does not constitute an airport purpose. Therefore, the RDU Airport Authority Board may not execute the quarry lease without the consent of the four owning municipalities.*

If the RDU Airport Authority Board approves, executes, or solicits a lease for mineral extraction and/or quarry purposes without following the required FAA procedures described herein, it will be in violation of federal regulations. If the RDU Airport Authority Board approves executes, or solicits a lease for mineral extraction and/or quarry purposes without the consent of the four owning municipalities, it will be in violation of the state enabling legislation. Furthermore, a decision to lease public property to a private business causing major environmental impacts demands a public discussion.

II. Governing Federal Law

Throughout the last eighty years there have been three federal grant programs which addressed federal funding of airports; the Federal Aid to Airports Program (FAAP) enacted in 1946 and repealed in 1970, the Airport Development Aid Program (ADAP) enacted in 1970 and repealed in 1982, and the Airport Improvement Program Act (AIP) which is the current law.

Given that the Odd Fellows Tract was acquired in 1976, grant money used to acquire the property would have been appropriated under either the FAAP or the ADAP, reimbursed by such, or used as an FAA project match. From the Wake County Commissioners and RDU Airport Authority minutes, it is likely that the agreement which references the acquiring of the Odd Fellows Tract was found in either FAA Grant Project No 37-0056-01, No 8-37-0056-02, No 6-37-0056-30 or a similar FAA grant between 1973 and 1977. Therefore, the funding would have been governed by the FAAP. Thus, current airport grant and release procedures are governed by the AIP and the grant funding likely used to acquire the Odd Fellows Tract was governed by the FAAP. It should be noted that this distinction regarding the applicable aid program is important as to the type and nature of federal obligations, but does not alter the release requirements and procedures outlined below.

There are additional materials published by the FAA which aid in interpretation of the AIP. Notably, the Airport Compliance Manual – Order 5190.6B (the “Manual”) establishes the policies and procedures for FAA personnel to follow in carrying out the FAA’s responsibilities for ensuring airport compliance. The Manual also addresses the various continuing commitments airport owners make to the United States as a condition for the grant of federal funds or the conveyance of property for airport purposes.

III. The Odd Fellows Tract and Surrounding Tracts are Federally Obligated

The Manual states that under the various federal grant programs, the sponsor of a project agrees to assume certain federal obligations pertaining to the operation and use of the airport. These federal obligations are embodied in the grant application. *Order 5190.65, Chapter 4, Section 4.2.*

Chapter 22 details more specifically the manner in which airport property becomes federally obligated. The pertinent language states “any property, when described as part of an airport in an agreement with the United States or defined by an airport layout plan (ALP) or listed in the Exhibit “A” property map, is considered to be “dedicated” or obligated property for airport purposes by the terms of the agreement.” Further, property may be federally obligated even if the property was not expressly designated in an Airport Layout Plan. Chapter 22.4 of the Manual details other situations where federal obligations attach such as the “acquisition of property with airport revenue, regardless of whether the property is on the Exhibit “A” or ALP. *Order 5190.65, Chapter 22, Section 22.4(b)(4).*

Here, it is likely that the Odd Fellows tract was included in the Project Application referenced in the September 6, 1966 meeting minutes of the Wake County Commissioners. Historical records indicate that from 1966 through 1976, RDU Airport was planning the expansion of additional runway and bought the Odd Fellows tract and surrounding tracts for this purpose. However, public opinion halted the project in the mid 70s and the additional runway was never built. Regardless of which grant application was used to acquire the Odd Fellows Tract, it and the surrounding tracts are federally obligated.

Even if the Odd Fellows tract was not acquired with federal grant money and was not identified in a federal grant application, the tract was certainly purchased with airport revenue. As described above, this alone is enough to attach federal obligations to the Odd Fellows Tract.

IV. The Proposed Lease for a Quarry Would Require a Release of Obligations from the FAA

The Manual states further that when airport property was originally acquired by the airport for an aeronautical use and is no longer needed for such use, the airport sponsor(s) must seek a release of federal obligations from the FAA. A “release” is defined as “the formal, written authorization discharging and relinquishing the FAA’s right to enforce an airport’s contractual obligations” and may be granted to permit the disposal of airport property. *Order 5190.65, Chapter 22, Section 22.2.*

The Manual states that long term leases (those 25 years or longer) that are not related to aeronautical activities or airport support services have the effect of a release for all practical purposes, and shall be treated the same as a release. The section goes on to cite specific examples including convenience concessions serving the public, ground transportation, food, and public services. *Order 5190.65, Chapter 22, Section 22.33(d).*

Here, the airport is seeking to convert the Odd Fellows Tract, which was originally acquired for the development of a new runway, to a quarry. Considering the provided examples of non-aeronautical uses, the proposed quarry is certainly a non-aeronautical use as it would not directly serve the airport and would be run by a private company. Wake Stone Corporation has proposed a 35 year mining lease on the Odd Fellows Tract, a lease longer than 25 years which would be treated as a disposal of airport property by the FAA.

V. As Co-Sponsors the City of Raleigh, City of Durham, County of Wake, and County of Durham Must Join in the Request for Release

The Manual states that the sponsor must submit its request for release in writing signed by a duly authorized official of the sponsor. *Order 5190.65, Chapter 22, Section 22.23.* A “sponsor” is a defined term in all of the above referenced federal grant programs. In the AIP, a sponsor is defined as “any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary, in accordance with this title, an application for financial assistance.” 49 USC 2202 Sec. 503(a)(21). Sponsor is defined in the same way in both the FAAP and the ADAP.

Here, the four municipalities are clearly sponsors under the defined term and must join in and sign any request for release submitted to the FAA. Here, the Grant Agreement in the 1966 meeting minutes of the Wake County Commissioners specifically lists “The Cities of Raleigh and Durham, North Carolina, Counties of Wake and Durham, North Carolina and Raleigh-Durham Airport Authority, North Carolina” as Co-Sponsors under the agreement. Additionally, the sponsors have been listed in the same manner in more recent grant agreements including the Grant Agreement dated June 12, 2015. Therefore, the RDU Airport Authority may not seek from the FAA a release of federal obligations for the Odd Fellows Tract without the joinder and signature of the four municipalities.

VI. Conclusion

In conclusion, to execute a long term lease of the Odd Fellows Tract to Wake Stone to operate a rock quarry, the co-sponsors of the RDU Airport are required to obtain a release of federal obligations from the FAA. The four municipalities who are sponsors under the AIP must join in the execution of any request for release sent to the FAA. Prior to executing the release document, the four municipalities must act in the best interest of their respective communities.

Cc:

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The Honorable Dan Blue, NC Senator

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